

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
DEC 29 2011
Federal Communications Commission
Office of the Secretary

In the Matter of)

MARITIME COMMUNICATIONS/LAND)
MOBILE, LLC)

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Participant in Auction No. 61 and Licensee of)
Various Authorizations in the Wireless Radio)
Services)

Application File Nos. 0004030479,
0004144435, 0004193028,
0004193328, 0004354053,
0004309872, 0004310060,
0004314903, 0004315013,
0004430505, 0004417199,
0004419431, 0004422320,
0004422329, 0004507921,
0004153701, 0004526264,
0004636537, and 0004604962

Applicant with ENCANA OIL AND GAS (USA),)
INC.; DUQUESNE LIGHT COMPANY; DCP)
MIDSTREAM, LP; JACKSON COUNTY)
RURAL MEMBERSHIP ELECTRIC)
COOPERATIVE; PUGET SOUND ENERGY,)
INC.; ENBRIDGE ENERGY COMPANY, INC.;)
INTERSTATE POWER AND LIGHT)
COMPANY; WISCONSIN POWER AND)
LIGHT COMPANY; DIXIE ELECTRIC)
MEMBERSHIP CORPORATION, INC.;)
ATLAS PIPELINE – MID CONTINENT, LLC)
DENTON COUNTY ELECTRIC)
COOPERATIVE, INC., DBA COSERV)
ELECTRIC; AND SOUTHERN CALIFORNIA)
REGIONAL RAIL AUTHORITY)

For Commission Consent to the Assignment of)
Various Authorizations in the Wireless Radio)
Services)

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**SKYTEL REPLY AND LIMITED OBJECTION TO PINNACLE PETITION TO
INTERVENE**

Pursuant to Section 1.294 of the Commission's rules, Warren C. Havens, Environmental
LLC, Intelligent Transportation and Monitoring Wireless LLC, Skybridge Spectrum Foundation,
Telesaurus Holdings GB LLC, Verde Systems LLC, and V2G LLC (collectively, "SkyTel"), by

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their attorneys, hereby reply to the Petition to Intervene submitted by Pinnacle Wireless, Inc. (“Pinnacle”) in the above-captioned proceeding on December 19, 2011 (the “Pinnacle Petition”).

Generally, SkyTel does not object to the intervention of Pinnacle as a party in this proceeding, assuming that Pinnacle’s participation will be confined solely to the provision of relevant information concerning the history and status of the site-based authorizations licensed to Maritime Communications/Land Mobile, LLC (“Maritime”). Given that essentially the sole basis Pinnacle provides in justification of its participation in this hearing proceeding is that Pinnacle has substantial information concerning the construction and operation of one of Maritime’s site-based licenses, specifically WRV374, this is not an unreasonable condition on Pinnacle’s intervention.

It is curious, however, that Pinnacle notified every other party to this proceeding of Pinnacle’s intention to file the Pinnacle Petition with the exception of SkyTel.¹ Had Pinnacle elected to notify SkyTel, SkyTel could have informed Pinnacle that it had no particular objection to Pinnacle’s participation and, indeed, that SkyTel would welcome the opportunity to seek relevant information from Pinnacle concerning Maritime’s current and past operations. Instead, Pinnacle elected not to notify SkyTel and then to lard its Petition with attacks on SkyTel that are irrelevant to the ostensible subject of the Pinnacle Petition – whether or not Pinnacle should be permitted to intervene.²

¹ Pinnacle Petition at 8.

² By way of example, Pinnacle states: “Although the Havens parties joined in the Enforcement Bureau’s recent request to seek discovery on issue (g) from Maritime, it seems unlikely that Havens has any real interest in gathering evidence demonstrating construction of Maritime’s site-based licenses since it is Havens who is seeking to have the site-licenses [sic] cancelled for *alleged* lack of construction.” *Id.* at 6. This sentence is baffling – Pinnacle essentially states that SkyTel has no interest in the question of whether Maritime’s licenses were constructed because SkyTel believes they were not constructed. In any event, setting aside the questionable logic, SkyTel makes no secret of the fact that it seeks a determination that any of Maritime’s site-based

Pinnacle's explanation of the timing of its Petition is also curious. Pinnacle asserts that its position with respect to intervention "changed with Maritime's recent bankruptcy filing,"³ notwithstanding the fact that Maritime filed its petition for protection under the bankruptcy code *four and a half months* prior to the submission of the Pinnacle Petition.⁴ If Pinnacle is permitted to intervene, SkyTel trusts that the Presiding Judge will act to limit Pinnacle's participation in the event Pinnacle's conduct in this proceeding betrays an intention to launch irrelevant, gratuitous attacks against SkyTel or to delay this proceeding, rather than to provide relevant information.

SkyTel further assumes that, in the event the Presiding Judge determines, in his discretion, to grant Pinnacle leave to intervene as a party in this proceeding, Pinnacle will not object to reasonable discovery requests submitted to Pinnacle by SkyTel or the Enforcement Bureau. Again, given that Pinnacle's sole argument for its intervention is Pinnacle's allegation that it is in possession of substantial information concerning one of Maritime's site-based licenses and operations associated with that license, there should be no basis for Pinnacle to object to, or seek to avoid complying with, reasonable discovery requests. In particular, the Presiding Judge directed the Enforcement Bureau and SkyTel to submit joint discovery requests concerning Maritime's site-based licenses to the Presiding Judge for his review and approval. Because Pinnacle is, unlike Maritime, not currently in bankruptcy and is *voluntarily* seeking to

authorizations that were not constructed or operated in accordance with applicable Commission rules automatically terminated. The ongoing existence of site-based licenses that should have terminated causes a substantial and open-ended economic injury to SkyTel.

³ *Id.* at 5.

⁴ SkyTel also notes that Pinnacle was certainly aware of SkyTel's challenge to the validity of Maritime's license for WRV374, as the "pending" lease notification Pinnacle has on file is subject to a petition submitted by Skytel. See FCC File No. 0004131898. SkyTel served Pinnacle with a copy of this petition on March 25, 2010. Nothing has "changed" with respect to Pinnacle's knowledge or understanding of SkyTel's challenges to the validity of Maritime's licenses.

participate as a party in this proceeding, SkyTel respectfully requests that the Presiding Judge impose no such condition on discovery requests that any party may submit to Pinnacle.

In short, SkyTel does not object to Pinnacle's intervention in this proceeding, but asks that, in any order granting Pinnacle permission to intervene as a party, the Presiding Judge make clear that: (1) Pinnacle's participation will be confined to issue (g) in the Hearing Designation Order⁵ as to the portion of Maritime's site-based license WRV374 that Pinnacle leases; (2) that Pinnacle intervention will not needlessly or unreasonably delay the hearing; and (3) that Pinnacle will not benefit from special discovery protections extended to Maritime and will be subject to discovery permitted under the applicable Commission rules that may reasonably lead to admissible evidence relevant to any issue designated for hearing.

⁵ Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, EB Docket No. 11-71, FCC 11-64, ¶ 62 (April 19, 2011) ("To determine whether Maritime constructed or operated any of its stations at variance with sections 1.955(g) and 80.49(a) of the Commission's rules.")

Respectfully Submitted,

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December 29, 2011

CERTIFICATE OF SERVICE

I, Patrick R. McFadden, herby certify that on this 29th day of December, 2011, a true copy of this Reply and Limited Opposition was served via first class, postage paid United States Mail upon the following:

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